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9 FRANKLIN BIRL WEEKLY

10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA**

12  
13 FRANKLIN BIRL WEEKLY, an  
14 individual.

15 Plaintiff,

16 v.

17  
18 UNITED STATES OF AMERICA;  
19 CITY OF FRESNO, a public entity;  
20 COUNTY OF FRESNO, a public entity;  
21 CALIFORNIA DEPARTMENT OF  
22 PUBLIC HEALTH, a public entity; and  
23 Does 1 to 50, inclusive.

24 Defendants.

Case No.:

**COMPLAINT FOR DAMAGES**

1. PREMISES LIABILITY

25  
26 COMES NOW, Plaintiff, FRANKLIN BIRL WEEKLY, and alleges  
27 against Defendants, and each of them, as follows:

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**I.**

**JURISDICTION**

1. This action is brought pursuant to the Tort Claims Act, 28 U.S.C. §2671 et seq. Jurisdiction is founded on 29 U.S.C. §§1346(b).

**II.**

**VENUE**

2. Venue is proper in the Eastern District of California. The accident giving rise to this complaint occurred at a medical facility located at 2615 E Clinton Ave., Fresno, CA 93703, which is within the present judicial district.

**III.**

**PARTIES**

3. Plaintiff FRANKLIN BIRL WEEKLY (hereafter "PLAINTIFF") is and at all relevant times was a resident of Tulare County, California.

4. Plaintiff is informed and believes and thereon alleges that Defendants UNITED STATES OF AMERICA; CITY OF FRESNO, a public entity; COUNTY OF FRESNO, a public entity; CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, a public entity; and Does 1 to 50, inclusive, are and at all times mentioned herein, were public entities, corporations, sole proprietors, shareholders, associations, partners and partnerships, joint ventures, and/or business entities unknown.

5. Defendants DOES 1-50, are sued herein under fictitious names, their true names and capacities being unknown to Plaintiff. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by those Defendants.

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1 6. At all times relevant herein, Defendant UNITED STATES OF  
2 AMERICA is a governmental agency.

3 7. At all times relevant herein, Defendants CITY OF FRESNO,  
4 COUNTY OF FRESNO, CALIFORNIA DEPARTMENT OF PUBLIC  
5 HEALTH are public entities.

6 **IV.**

7 **FACTS COMMON TO ALL ACTIONS**

8 8. Plaintiff is informed and believes, and based upon such information  
9 and belief alleges that at all times relevant hereto Defendants UNITED  
10 STATES OF AMERICA; CITY OF FRESNO, a public entity; COUNTY  
11 OF FRESNO, a public entity; CALIFORNIA DEPARTMENT OF PUBLIC  
12 HEALTH, a public entity; and Does 1 to 50, inclusive, are, and at all times  
13 herein mentioned were public entities, corporations, sole proprietors,  
14 shareholders, associations, partners and partnerships, joint ventures, and/or  
15 business entities unknown. At all times herein mentioned, said Defendants  
16 were the owners, lessors, sub-lessors, managing agents, landlords, renters,  
17 managers, operators, marketers, inspectors, maintainers and controllers, of a  
18 medical facility located at 2615 E Clinton Ave., Fresno, CA 93703,  
19 (hereinafter referred to as "THE SUBJECT PREMISES"), to which building  
20 the general public is invited to come.

21 9. At all times herein mentioned, each of the Defendants were the agents,  
22 servants, and employees of their co-defendants, and in doing the things  
23 hereinafter alleged were acting in the scope of their authority as agents,  
24 servants, and employees, and with permission and consent of their co-  
25 defendants. Plaintiff is further informed and believes, and thereon alleges,  
26 that each of the Defendants herein gave consent to, ratified, and authorized  
27 the acts alleged herein to each of the remaining Defendants.  
28

1 10. On March 15, 2021, Plaintiff submitted a claim based on the  
2 allegations herein to Defendant UNITED STATES OF AMERICA for  
3 administrative settlement and has not been rejected by an agent for  
4 Defendant UNITED STATES OF AMERICA.

5 11. On March 15, 2021, Plaintiff submitted a claim based on the  
6 allegations herein to Defendant CITY OF FRESNO for administrative  
7 settlement and was rejected on March 30, 2021.

8 12. On March 15, 2021, Plaintiff submitted a claim based on the  
9 allegations herein to Defendant COUNTY OF FRESNO for administrative  
10 settlement and was rejected on May 25, 2021.

11 13. On March 15, 2021, Plaintiff submitted a claim based on the  
12 allegations herein to Defendant CALIFORNIA DEPARTMENT OF  
13 PUBLIC HEALTH for administrative settlement and has not been rejected  
14 by an agent for Defendant CALIFORNIA DEPARTMENT OF PUBLIC  
15 HEALTH.

16 **V.**

17 **FIRST CAUSE OF ACTION**

18 **PREMISES LIABILITY**

19 **(Against All Defendants)**

20 10. Plaintiff re-alleges each and every allegation contained in the above  
21 Paragraphs 1 through 9, and by this reference incorporates said paragraphs as  
22 though fully set forth herein.

23 11. On or about September 16, 2020, Plaintiff was lawfully on Defendants'  
24 premises. As Plaintiff attempted to sit in a chair within the subject premises,  
25 suddenly and without warning, the chair rolled from under and away from  
26 him, causing Plaintiff to fall onto the ground, thereby causing Plaintiff to  
27 endure severe injuries and pain.

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1 12. On or about September 16, 2020, Defendants UNITED STATES OF  
2 AMERICA; CITY OF FRESNO, a public entity; COUNTY OF FRESNO, a  
3 public entity; CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, a  
4 public entity; and Does 1 to 50, inclusive, carelessly and negligently owned,  
5 rented, managed, leased, supervised, inspected, operated, maintained and/or  
6 controlled the premises located at or near 2615 E Clinton Ave., Fresno, CA  
7 93703, such that it was in a dangerous, defective and unsafe condition in  
8 conscious disregard for the risk of harm to invitees thereon. By reason of said  
9 carelessness, negligence and conscious disregard of the Defendants, and each  
10 of them, said premises were unsafe and dangerous to the general public and  
11 specifically Plaintiff, FRANKLIN BIRL WEEKLY.

12 13. Defendants UNITED STATES OF AMERICA; CITY OF FRESNO, a  
13 public entity; COUNTY OF FRESNO, a public entity; CALIFORNIA  
14 DEPARTMENT OF PUBLIC HEALTH, a public entity; and Does 1 to 50,  
15 inclusive, and each of them, failed to warn Plaintiff of said dangerous,  
16 defective and unsafe condition, although said Defendants, and each of them,  
17 knew of said condition.

18 14. Plaintiff has it on information and belief, and thereby alleges, that, at  
19 the aforementioned time and place, Defendants UNITED STATES OF  
20 AMERICA; CITY OF FRESNO, a public entity; COUNTY OF FRESNO, a  
21 public entity; CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, a  
22 public entity; and Does 1 to 50, inclusive, had actual or constructive notice of  
23 the dangerous condition, for a sufficient time prior to the injury to have taken  
24 measures to protect against the dangerous conditions, and failed to do so, in  
25 violation of Government Code §835.

26 15. Government Code §835 is a safety statute that applies in this instance  
27 as it is intended to protect the class of people to which the Plaintiff belongs  
28 and which the statute is intended to guard against the particular harm suffered

1 by the Plaintiff that occurred as a result of the dangerous condition on  
2 Defendants' premises. As such, Plaintiff is informed and believes, and there  
3 upon, alleges that Defendants' conduct constitutes negligence.

4 16. Due to these acts and failures to act, Defendants UNITED STATES  
5 OF AMERICA; CITY OF FRESNO, a public entity; COUNTY OF  
6 FRESNO, a public entity; CALIFORNIA DEPARTMENT OF PUBLIC  
7 HEALTH, a public entity; and Does 1 to 50, inclusive, and the employees are  
8 liable for Plaintiff's injuries under the Government Code, including but not  
9 limited to, Section 815.2.

10 17. As a legal, direct, and proximate result of the above-mentioned  
11 conduct of Defendants UNITED STATES OF AMERICA; CITY OF  
12 FRESNO, a public entity; COUNTY OF FRESNO, a public entity;  
13 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, a public entity; and  
14 Does 1 to 50, inclusive, and each of them, Plaintiff was injured in his health,  
15 strength and activity, sustaining injury to his body, and shock and injury to  
16 his person, all of which have caused and continue to cause great physical,  
17 mental, and emotional pain and suffering all to his general damages, the  
18 exact amount of such to be stated according to proof.

19 18. As a legal, direct, and proximate result of the above-mentioned  
20 conduct of Defendants UNITED STATES OF AMERICA; CITY OF  
21 FRESNO, a public entity; COUNTY OF FRESNO, a public entity;  
22 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, a public entity; and  
23 Does 1 to 50, inclusive, and each of them, Plaintiff was compelled to and did  
24 employ the services of hospitals, physicians, surgeons, nurses and the like, to  
25 care for and treat him, and did incur hospital, medical, professional and  
26 incidental expenses, the exact amount of such to be stated according to proof.

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19. As a legal, direct, and proximate result of the above-mentioned conduct of Defendants UNITED STATES OF AMERICA; CITY OF FRESNO, a public entity; COUNTY OF FRESNO, a public entity; CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, a public entity; and Does 1 to 50, inclusive, and each of them, Plaintiff will necessarily incur additional like expenses for an indefinite period of time in the future, the exact amount of such to be stated according to proof.

20. As a direct and proximate result of the negligence, carelessness, and violation of the law by Defendants UNITED STATES OF AMERICA; CITY OF FRESNO, a public entity; COUNTY OF FRESNO, a public entity; CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, a public entity; and Does 1 to 50, inclusive, and each of them, Plaintiff has and will incur a loss of earnings and/or loss of earning capacity, which will be stated according to proof, pursuant to California Code of Civil Procedure section 425.10.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. For general damages in a sum according to proof;
2. For medical, hospital, and related expenses according to proof;
3. For loss of earnings according to proof;
4. For loss of future earning capacity according to proof;
5. For costs of suit incurred herein;
6. For such other and further relief as this Court may deem proper.

DATED: March 24, 2022

**DOWNTOWN L.A. LAW GROUP**

  
Anthony Werbin, Esq.  
Attorneys for Plaintiff,  
FRANKLIN BIRL WEEKLY

**JURY TRIAL DEMAND**

Plaintiff demands trial by jury of all issues so triable.

DATED: March 24, 2022

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Attorneys for Plaintiff,  
FRANKLIN BIRL WEEKLY